

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0179

ORIGINAL

STATE OF MONTANA,

Plaintiff and Appellee,

v.

STANLEY D. DETHMAN,

Defendant and Appellant.

FILED
MAY 14 2010
ED SMITH
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**LIMITED NOTICE OF APPEARANCE
AND REQUEST FOR CLARIFICATION**

Undersigned counsel wishes to inform this Court that as of April 27, 2010, this Court granted Defendant and Appellant's, Stanley D. Dethman (Dethman), petition for an out-of-time appeal. In the Order granting his petition, this Court did not appoint the Office of the Appellate Defender to represent Dethman in his appeal to this Court. Instead, the Order states that "Dethman shall file his notice of appeal within ten days of the date of this Order. Thereafter, the Montana Rules of Appellate Procedure shall govern with respect to the filing of the record and briefs on appeal." *See* attached Order.

Dethman initially had a public defender. Dethman proceeded to trial and his public defender was ordered to be his stand-by counsel. After being convicted, a notice of appeal was not filed, so Dethman hired Kevin Vainio to file a petition for

out of time appeal. As noted, this Court granted the petition, and Mr. Vainio filed a Notice of Appeal on Dethman's behalf on April 29, 2010. Dethman's file was then sent to the OAD. Presumably, Dethman qualifies for OAD services; however, the OAD will need to determine Dethman's indigency status.

If Dethman qualifies for OAD services, the OAD will then take his case. Again it should be noted, though, that the OAD was never appointed to represent Dethman, and at this stage, the clerk's office indicates Kevin Vainio is his counsel on appeal.

Undersigned counsel wanted this Court to be aware of the manner in which the OAD has become involved in this case, especially regarding appointment or lack thereof. If this Court desires the OAD to represent Dethman on his appeal, undersigned counsel will do so because the OAD does not want Dethman--presumably, an indigent individual--without counsel.

Respectfully submitted this 14th day of May, 2010.

OFFICE OF THE STATE PUBLIC DEFENDER
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145

By: Joslyn Hunt
JOSLYN HUNT
Chief Appellate Defender

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

Limited Notice to be mailed to:

STEVE BULLOCK
Montana Attorney General
MARK MATTIOLI
Assistant Attorney General
P.O. Box 201401
Helena, MT 59620-1401

LEWIS K. SMITH
Powell County Attorney
409 Missouri Avenue
Deer Lodge, MT 59722

KEVIN E. VAINIO
Attorney At Law
27 W. Park Street, Suite 5
Butte, MT 59701-1722

STANLEY D. DETHMAN
Montana State Prison
700 Conley Lake Drive
Deer Lodge, MT 59722

DATED:

May 14th 2010 Rachel Smith

STATE OF MONTANA

Shirley Ann Appellant,

v.

STANLEY D. DETHMAN,

Defendant and Appellant.

ORDER
FILED

APR 13 2011

T. J. Smith
CLERK OF THE DISTRICT COURT
STATE OF MONTANA

Stanley Dean Dethman has petitioned the Court, through his counsel, Kevin E. Vainio, to allow him to file an out-of-time appeal under M. R. App. P. 4(6). Counsel claims Dethman did not have effective assistance of counsel in filing a timely appeal and that, in light of Dethman's schizophrenia, his ability to engage in a reasonable and lucid dialog concerning the decision to represent himself at trial was impaired. Attached to the petition is documentation of Dethman's multiple attempts to obtain appointed counsel for purposes of appeal, and his repeated efforts to file a notice of appeal on his own behalf, together with a supporting affidavit by Dethman. According to Vainio, the Powell County Attorney opposes the petition for an out-of-time appeal.

M. R. App. P. 4(6) provides that an out-of-time appeal will be allowed only in the infrequent harsh case under extraordinary circumstances amounting to a gross miscarriage of justice. Under the circumstances here presented, we deem it appropriate to grant the petition for leave to file an out-of-time appeal. Accordingly,

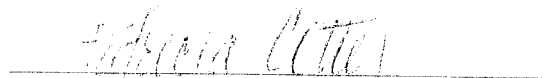
IT IS ORDERED that Dethman's petition for leave to file an out-of-time appeal is GRANTED.

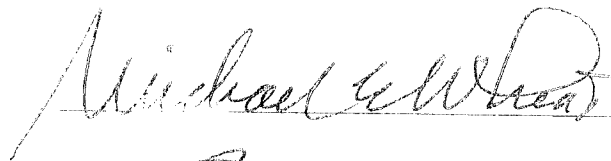
and the Court is hereby advised that the Court has received the
original of the writ of habeas corpus and the return thereto, and the
Court will report thereon at the next term of the Court.

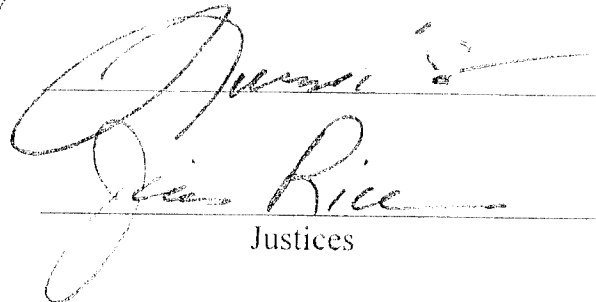
The Clerk is directed to provide copies of this order to all parties and counsel.

DATED this 22nd day of April, 2010.


Chief Justice


Justice Little


Justice Michael Wheat


Justice Rice